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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,371	05/16/2001	Alison Davies	DAV 13002REF	9780
7590	10/17/2003		EXAMINER	
Bacon & Thomas 625 Slaters Lane Fourth Floor Alexandria, VA 22314-1176			EWOLDT, GERALD R	
			ART UNIT	PAPER NUMBER
			1644	

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/831,371	DAVIES, ALISON	
	<b>Examiner</b>	<b>Art Unit</b>	
	G. R. Ewoldt, Ph.D.	1644	

-- The MAILING DATE of this communication app.ars on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 10 July 2001 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)  Claim(s) 2-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 2, 4-9, 11-16 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) . . . . .

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: . . . . .

**DETAILED ACTION**

1. Applicant's election of Group I, filed 7/10/03, is acknowledged.
2. Upon further consideration, an additional species election is required. The Examiner apologizes for any delay or inconvenience caused by this further requirement. Upon receipt of Applicant's response, the Examiner will make every attempt to expedite the examination of the application.
3. This application contains inventions drawn to patentably distinct species. Applicant is required under 35 U.S.C. § 121 to elect:
  - A) a **specific** therapy, such as cancer therapy or therapy for HIV infection,
  - B) and list all Claims readable thereon including those subsequently added. Currently Claims 2, 4--9, and 13-16 are generic.
4. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The different diseases for which therapy would be administered, e.g., cancer or AIDS, comprise significantly different search considerations. See for example The Merck Manual (1999) in which treatment for HIV infection is covered in sections relating to infectious disease and hematology whereas treatment for cancer is covered in a section relating to oncology. While there may exist some overlap in the topics, they are not coextensive. Therefore, the species are independent and patentable over one another.

5. Applicant is advised that the response to this requirement to be complete must include an election of the species to be examined even though the requirement be traversed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (703) 308-9805. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30

pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. **Please note:** any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 Customer Service Center at (703) 308-0198.

G.R. Ewoldt, Ph.D.  
Primary Examiner  
Technology Center 1600  
October 14, 2003



**G.R. EWOLDT, PH.D.  
PRIMARY EXAMINER**